

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 27..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P.No.25468 of 2007

and

M.P. No. 1 of 2007

A.Murali

..Petitioner

Vs.

1. The Deputy Inspector General of Police
Villupuram Range
Villupuram

2. The Deputy Superintendent of Police
Neyveli Sub-Division
Cuddalore

... Respondents

Petition filed for issuance of writ of Certiorari calling for the records of the first respondent formulating the charge memo in P.R. 74/2007 dated 04.6.2007 and the consequential order of the first respondent passed in his C.No. B2/3110/2007 dated 10.7.2007 appointing the second respondent as the Enquiry Officer and quash the same.

For Petitioner : Mr. S. Ravi

For Respondents : Mrs. Bhavani Subbarayan, AGP

ORDER

I have heard the arguments of Mr.S. Ravi, learned counsel appearing for the petitioner and Mrs. Bhavani Subbarayan, learned Assistant Government Pleader representing the respondents and have perused the records.

2. The petitioner was a direct recruit to the post of Sub-Inspector of Police and in the present writ petition, he challenges the order dated 10.7.2007 passed by the first respondent wherein and by which an oral enquiry has been ordered in respect of the charge memo made in P.R. No. 74 of 2007 framed under Rule 3(b) of the Tamil Nadu Police Sub-ordinate Service (Discipline and Appeal) Rules dated 04.6.2007.

3. The gravamen of the charge was that the petitioner had illicit relationship with another Sub-Inspector, by name, Tmt. K.P. Sumathi and since the petitioner and his wife Tmt. Kanchana abused her in a filthy language and insulted her, she Sumathi committed suicide on 14.3.2007 and the conduct of the petitioner, according to the respondents, contravenes Rule 23(2) of the Police Conduct Rules, 1964. The petitioner had given his reply dated 21.6.2007. Thereafter, not satisfied with his reply, an Enquiry Officer has been appointed. According to the petitioner, in respect of the same incident, a First Information Report was registered in Crime No. 67 of 2007 by the Virudhachalam Police Station on 14.3.2007. Therefore, the enquiry should not be held until the completion of the criminal trial, which is likely to take place against the petitioner. In fact, the suspension passed against the petitioner was revoked by an order dated 10.7.2007 without prejudice to the criminal case as well as departmental action.

4. Mr. Ravi, learned counsel appearing for the petitioner, heavily relied upon the judgment of the Supreme Court in its decision reported in 1988 (4) SCC 319 [Kusheshwar Dubey v. M/s Bharat Cooking Coal Ltd. and others] as well as the Division Bench judgment of this Court reported in 2006 (1) M.L.J. 511 [Indian Overseas Bank and another v. P.Ganesan and others]. According to the learned counsel for the petitioner, if the proceedings in a criminal case and the departmental proceedings are based on same set of facts and the evidence in both the proceedings are same, then it is desirable to keep departmental enquiry pending until the criminal trial is completed.

5. In fact, the Division Bench judgment of this Court relied on by the learned counsel in Indian Overseas Bank case (cited supra), has been specifically overruled by the Supreme Court vide its decision reported in 2007 (5) C.T.C. 632 [Indian Overseas Bank and another v. P.Ganesan and others] and in paragraphs 20 and 21, it has been held as follows:

Para 20 : "The High Court, unfortunately, although noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non stayed of the disciplinary proceedings shall not only prejudice the delinquent

officers but the matter also the matter involves a complicated question of law.

Para 21 : The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the Bank which was not the subject matter of allegations in a criminal case, the departmental proceedings should not have been stayed."

6. In view of the above, the writ petition is misconceived. Further, already the petitioner has given his explanation and it is for him to participate in the enquiry and prove his innocence. Therefore, the writ petition deserves to be dismissed and accordingly, dismissed. However, there will be no order as to costs. Connected Miscellaneous Petitions are closed.

gri

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Deputy Inspector General of Police
Villupuram Range
Villupuram
2. The Deputy Superintendent of Police
Neyveli Sub-Division
Cuddalore

+1 cc to Mr.S.Ravi, Advocate Sr.No.70226.

+1 cc to The Government Pleader Sr.No.70408.

MA(CO)
dcp/10.12

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